

Pennichuck Water Works, Inc.
Pennichuck Aqueduct Company
Pennichuck East Utility, Inc.

DW 02-126

Pennichuck Water Works, Inc., Pennichuck Aqueduct Company and Pennichuck East
Utility, Inc.'s Response to City of Nashua's First Set of Data Requests

Date Request Received: July 29, 2002
Data Request No.: Nashua Pen 1-24

Date of Response: August 12, 2002
Witness: Donald Ware

REQUESTS

Please supply all reports, studies, work papers, applications and other data submitted to the Corps of Engineers and N.H. Department of Environmental Services relating to licenses and/or approvals for withdrawal of water from the Merrimack River.

RESPONSE

A copy of the Corps of Engineers license for approval of withdrawal of water from the Merrimack River is available for inspection at the Nashua office of McLane, Graf, Raulerson & Middleton, Professional Association, 400 Amherst Street, Nashua. This license may be reviewed upon reasonable advance notice to Kathryn Mulhearn, Legal Secretary, McLane, Graf, Raulerson & Middleton, Professional Association, (603)436-2818.



DEPARTMENT OF THE ARMY
NEW ENGLAND DIVISION, CORPS OF ENGINEERS
424 TRAPELO ROAD
WALTHAM, MASSACHUSETTS 02254-9149

REPLY TO
ATTENTION OF

24 January 1996

Regulatory Division
CENED-OD-R-199502485

Bernard J. Rousseau
Water Supply Manager
Pennichuck Water Works, Inc.
Four Water Street
PO BOX 448
Nashua, NH 03061-0448

Dear Mr. Rousseau:

In accordance with your recent request, your Department of the Army permit, number NH-MASO-81-235, special condition No. 1 is hereby amended as follows:


Diversion of up to 30 mgd can only be made when the river level at the intake structure is above 91.2 feet MSL. When the river level falls below 91.2 feet MSL the diversion rate shall not exceed 20 mgd. Provided that a minimum flow of 1.3 cfs (cubic feet per second per square mile of drainage) will be maintained below the water intake during the months of May and June and maintain a minimum flow of .5 cfs at all other times.

If the river flows fall below the minimums noted above then diversions noted in special condition No.1 of the original permit to apply.

This amendment is only valid until December 31, 2004. After which you must reapply to us so that we may reevaluate river withdrawals and impacts to local fisheries.

conditions of the original permit remain in full force and

BY AUTHORITY OF THE SECRETARY OF THE ARMY:


For J. Michael Bradbury
Lieutenant Colonel, Corps of Engineers
Deputy Division Engineer

b. That all activities authorized herein shall, if they involve, during their construction or operation, any discharge of pollutants into waters of the United States or ocean waters, be at all times consistent with applicable water quality standards, effluent limitations and standards of performance, prohibitions, pretreatment standards and management practices established pursuant to the Federal Water Pollution Control Act of 1972 (P.L. 92-500; 86 Stat. 816), the Marine Protection, Research and Sanctuaries Act of 1972 (P.L. 92-532, 86 Stat. 1052), or pursuant to applicable State and local law.

c. That when the activity authorized herein involves a discharge during its construction or operation, of any pollutant (including dredged or fill material), into waters of the United States, the authorized activity shall, if applicable water quality standards are revised or modified during the term of this permit, be modified, if necessary, to conform with such revised or modified water quality standards within 6 months of the effective date of any revision or modification of water quality standards, or as directed by an implementer on plan contained in such revised or modified standards, or within such longer period of time as the District Engineer, in consultation with the Regional Administrator of the Environmental Protection Agency, may determine to be reasonable under the circumstances.

d. That the discharge will not destroy a threatened or endangered species as identified under the Endangered Species Act, or endanger the critical habitat of such species.

e. That the permittee agrees to make every reasonable effort to prosecute the construction or operation of the work authorized herein in a manner so as to minimize any adverse impact on fish, wildlife, and natural environmental values.

f. That the permittee agrees that he will prosecute the construction or work authorized herein in a manner so as to minimize any reduction of water quality.

g. That the permittee shall permit the District Engineer or his authorized representative(s) or designee(s) to make periodic inspections at any time deemed necessary in order to assure that the activity being performed under authority of this permit is in accordance with the terms and conditions prescribed herein.

That the permittee shall maintain the structure or work authorized herein in good condition and in accordance with the plans and maps attached hereto.

That this permit does not convey any property rights, either in real estate or material, or any exclusive privileges; and that it does not authorize any injury to property or invasion of rights or any infringement of Federal, State, or local laws or regulations nor does it relieve the permittee of the requirement to obtain State or local assent required by law for the activity authorized herein.

j. That this permit may be summarily suspended, in whole or in part, upon a finding by the District Engineer that immediate suspension of the activity authorized herein would be in the general public interest. Such suspension shall be effective upon receipt by the permittee of a written notice thereof which shall indicate (1) the extent of the suspension, (2) the reasons for this action, and (3) any corrective or preventative measures to be taken by the permittee which are deemed necessary by the District Engineer to abate imminent hazards to the general public interest. The permittee shall take immediate action to comply with the provisions of this notice. Within ten days following receipt of this notice of suspension, the permittee may request a hearing in order to present information relevant to a decision as to whether his permit should be reinstated, modified or revoked. If a hearing is requested, it shall be conducted pursuant to procedures prescribed by the Chief of Engineers. After completion of the hearing, or within a reasonable time after issuance of the suspension notice to the permittee if no hearing is requested, the permit will either be reinstated, modified or revoked.

k. That this permit may be either modified, suspended or revoked in whole or in part if the Secretary of the Army or his authorized representative determines that there has been a violation of any of the terms or conditions of this permit or that such action would be in the public interest. Any such modification, suspension, or revocation shall become effective 30 days after receipt by the permittee of written notice of such action which shall specify the facts or conduct warranting same unless (1) within the 30-day period the permittee is able to satisfactorily demonstrate that (a) the alleged violation of the terms and the conditions of this permit did not, in fact occur or (b) the alleged violation was accidental, and the permittee has been operating in compliance with the terms and conditions of the permit and is able to provide satisfactory assurances that future operations shall be in full compliance with the terms and conditions of this permit; or (2) within the aforesaid 30-day period, the permittee requests that a public hearing be held to present oral testimony and evidence concerning the proposed modification, suspension or revocation. The conduct of this hearing and the procedures for making a final decision either to modify, suspend or revoke this permit in whole or in part shall be pursuant to procedures prescribed by the Chief of Engineers.

That in issuing this permit, the Government has relied on the information and data which the permittee has provided in connection with permit application. If, subsequent to the issuance of this permit, such information and data prove to be false, incomplete or misleading, this permit may be modified, suspended or revoked, in whole or in part, and/or the Government may, in addition, institute civil or criminal legal proceedings.

That modification, suspension, or revocation of this permit shall not be the basis for any claim for damages against the permittee.

That the permittee shall notify the District Engineer at what time the activity authorized herein will be commenced, as far in advance as the District Engineer may specify, and of any suspension of work, if for a period of more than 30 days, and of the completion of the work and its completion.

o. That if the activity authorized herein is not started on or before N/A day of 19 (one year from the date of issuance of this permit unless otherwise specified) and is not completed on or before 31st day of DECEMBER, 19 86, (three years from the date of issuance of this permit unless otherwise specified) this permit, if not previously revoked or specifically extended, shall automatically expire.

p. That this permit does not authorize or approve the construction of particular structures, the authorization or approval of which may require authorization by the Congress or other agencies of the Federal Government.

q. That if and when the permittee desires to abandon the activity authorized herein, unless such abandonment is part of a transfer procedure by which the permittee is transferring his interests herein to a third party pursuant to General Condition t hereof, he must restore the area to a condition satisfactory to the District Engineer.

r. That if the recording of this permit is possible under applicable State or local law, the permittee shall take such action as may be necessary to record this permit with the Register of Deeds or other appropriate official charged with the responsibility for maintaining records of title to and interests in real property.

That there shall be no unreasonable interference with navigation by the existence or use of the activity authorized herein.

t. That this permit may not be transferred to a third party without prior written notice to the District Engineer, either by the transferor's written agreement to comply with all terms and conditions of this permit or by the transferee subscribing to this permit in the space provided below and thereby agreeing to comply with all terms and conditions of this permit. In addition, if the permittee transfers the interests authorized herein by conveyance of realty, the deed shall reference this permit and the terms and conditions specified herein and this permit shall be recorded along with the deed with the Register of Deeds or other appropriate official.

11. Special Conditions: (Here list conditions relating specifically to the proposed structure or work authorized by this permit)

1. Diversion of 20 MGD (31 cfs) can only be made when the river level at the intake structure is above 91.2 feet (MSL). When the river level falls below 91.2 feet, the diversion or pumping rate shall not exceed 12 MDG.

2. Fish screens with a 3/4" maximum opening will be required at the intake, if monitoring indicates an entrainment problem with juvenile anadromous fish in the project area. The fish screens can be placed directly on the intake trash racks.

3. Daily water withdrawal records shall be provided to the Division Engineer once a month for at least two years after the intake structure is in operation.

4. That this permit will not be valid until and unless the New Hampshire Wetlands Board issues the required State License.

The following Special Conditions will be applicable when appropriate:

STRUCTURES IN OR AFFECTING NAVIGABLE WATERS OF THE UNITED STATES:

a. That this permit does not authorize the interference with any existing or proposed Federal project and that the permittee shall not be entitled to compensation for damage or injury to the structures or work authorized herein which may be caused by or result from existing or future operations undertaken by the United States in the public interest.

b. That no attempt shall be made by the permittee to prevent the full and free use by the public of all navigable waters at or adjacent to the activity authorized by this permit.

c. That if the display of lights and signals on any structure or work authorized herein is not otherwise provided for by law, such lights and signals as may be prescribed by the United States Coast Guard shall be installed and maintained by and at the expense of the permittee.

d. That the permittee, upon receipt of a notice of revocation of this permit or upon its expiration before completion of the authorized structure or work, shall, without expense to the United States and in such time and manner as the Secretary of the Army or his authorized representative may direct, restore the waterway to its former conditions. If the permittee fails to comply with the direction of the Secretary of the Army or his authorized representative, the Secretary or his designee may restore the waterway to its former condition, by contract or otherwise, and recover the cost thereof from the permittee.

e. Structures for Small Boats: That permittee hereby recognizes the possibility that the structure permitted herein may be subject to damage by wave wash from passing vessels. The issuance of this permit does not relieve the permittee from taking all proper steps to insure the integrity of the structure permitted herein and the safety of boats moored thereto from damage by wave wash and the permittee shall not hold the United States liable for any such damage.

MAINTENANCE DREDGING

a. That when the work authorized herein includes periodic maintenance dredging, it may be performed under this permit for _____ years from the date of issuance of this permit (ten years unless otherwise indicated);

b. That the permittee will advise the District Engineer in writing at least two weeks before he intends to undertake any maintenance dredging.

DISCHARGES OF DREDGED OR FILL MATERIAL INTO WATERS OF THE UNITED STATES:

a. That the discharge will be carried out in conformity with the goals and objectives of the EPA Guidelines established pursuant to Section 404(b) of the FURCA and published in 40 CFR 230;

b. That the discharge will consist of suitable material free from toxic pollutants in other than trace quantities;

c. That the fill created by the discharge will be properly maintained to prevent erosion and other non-point sources of pollution; and

d. That the discharge will not occur in a component of the National Wild and Scenic River System or in a component of a State wild and scenic river system.

DUMPING OF DREDGED MATERIAL INTO OCEAN WATERS:

a. That this dumping will be carried out in conformity with the goals, objectives, and requirements of the EPA criteria established pursuant to Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972, published in 40 CFR 220-228.

b. That the permittee shall place a copy of this permit in a conspicuous place in the vessel to be used for the transportation and/or dumping of the dredged material as authorized herein.

This permit shall become effective on the date of the District Engineer's signature.

I hereby accept and agree to comply with the terms and conditions of this permit.

Stephen E. Gorman V.P.

PERMITTEE

STEPHEN E. GORMAN V.P.

AUTHORITY OF THE SECRETARY OF THE ARMY:

Robert A. Rodota
R. A. RODOTA, USA
Colonel, Corps of Engineers
Division Engineer
District Engineer
DISTRICT ENGINEER
DISTRICT ENGINEER

6/30/81

DATE

7 July 1981

DATE

I hereby accept and agree to comply with the terms and conditions of this permit

TRANSFEREE

DATE